

SECOND REGULAR SESSION

# HOUSE BILL NO. 1945

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES GUERNSEY (Sponsor), LANT,  
MOLENDORP AND ELMER (Co-sponsors).

6162H.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 8.683 and 8.685, RSMo, and to enact in lieu thereof three new sections relating to design build contracts.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 8.683 and 8.685, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 8.683, 8.685, and 67.5050, to read as follows:

8.683. Upon award of a construction management services contract, the successful construction manager shall contract with the public owner to furnish his skill and judgment in cooperation with, and reliance upon, the services of the project architect or engineer. The construction manager shall furnish business administration, management of the construction process and other specified services to the public owner and shall perform in an expeditious and economical manner consistent with the interest of the public owner. Should the public owner determine it to be in the public's best interest, the construction manager may provide or perform basic services for which reimbursement is provided in the general conditions to the construction management services contract. The construction manager shall [not, however,] **also** be permitted to bid on or perform any of the actual construction on a public works project in which he is acting as construction manager, [nor shall] **and** any construction firm which controls, is controlled by, or shares common ownership or control with[,], the construction manager, **shall** be allowed to bid on or perform work on such project. The actual construction work on the project shall be awarded by competitive bidding as provided by law. All successful bidders shall contract directly with the public owner **or construction manager**, but shall perform at the direction of the construction manager unless otherwise provided in the construction manager's

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 contract with the public owner. All successful bidders shall provide payment and performance  
18 bonds to the public owner. All successful bidders shall meet all the obligations of a prime  
19 contractor to whom a contract is awarded, pertaining to the payment of prevailing wages  
20 pursuant to sections 290.210 to 290.340. In addition, all nonresident employers shall meet the  
21 bonding and registration requirements of sections 285.230 to 285.234.

8.685. [No] **Any** construction management services contract may be awarded by a public  
2 owner on a negotiated basis as provided herein [if] **regardless of whether** the construction  
3 manager, or a firm that controls, is controlled by, or shares common ownership or control with  
4 the construction manager, guarantees, warrants, or otherwise assumes financial responsibility for  
5 the work of others on the project; or provides the public owner with a guaranteed maximum price  
6 for the work of others on the project; or furnishes or guarantees a performance or payment bond  
7 for other contractors on the project. [In any such case, the contract for construction management  
8 services shall be let by competitive bidding as in the case of contracts for construction work.]

**67.5050. 1. As used in this section, the following terms mean:**

2 **(1) “Design-build”, a project for which the design and construction services are**  
3 **furnished under one contract;**

4 **(2) “Design-build contract”, a contract between a political subdivision and a design-**  
5 **builder to furnish the architectural, engineering, and related design services and the labor,**  
6 **materials, and other construction services required for a specific construction project;**

7 **(3) “Design-build project”, the design, construction, alteration, addition,**  
8 **remodeling, or improvement of any buildings or facilities under contract with a political**  
9 **subdivision. Contracts for design-build projects that involve the construction, replacement,**  
10 **or rehabilitation of a political subdivision property such that, in all cases, the project must**  
11 **exceed an expenditure of one million dollars;**

12 **(4) “Design-builder”, any individual, partnership, joint venture, corporation, or**  
13 **other legal entity that furnishes architecture or engineering services and construction**  
14 **services either directly or through subcontracts;**

15 **(5) “Design criteria package”, performance-oriented specifications for the design-**  
16 **build project sufficient to permit a design-builder to prepare a response to the political**  
17 **subdivision’s request for proposals for a design-build project, which may include**  
18 **preliminary designs for the project or portions thereof.**

19 **2. (1) Notwithstanding any other provision of law to the contrary, any political**  
20 **subdivision is authorized to enter into design-build contracts for design-build projects that**  
21 **exceed an expenditure of one million dollars.**

22           (2) In using a design-build contract, the political subdivision shall establish a  
23 written procedure by rule for prequalifying design-builders before such design-builders  
24 will be allowed to make a proposal on the project.

25           (3) The political subdivision shall adopt procedures for:

26           (a) The prequalification review team;

27           (b) Specifications for the design criteria package;

28           (c) The method of advertising, receiving, and evaluating proposals from design-  
29 builders;

30           (d) The criteria for awarding the design-build contract based on the design criteria  
31 package. As part of such criteria, the political subdivision may require a separate proposal  
32 stating the cost of construction; and

33           (e) Other methods, procedures, and criteria necessary to administer this section.

34           (4) The political subdivision is authorized to issue a request for proposals to a  
35 minimum of two and a maximum of five design-builders who are prequalified in  
36 accordance with this section.

37           (5) The political subdivision may require approval of any person performing  
38 subcontract work on the design-build project including, but not limited to, those furnishing  
39 design and construction services, labor, materials, or equipment.

40           3. (1) Before the prequalification process specified in this section, the political  
41 subdivision shall publicly advertise, once a week for two consecutive weeks, in a newspaper  
42 of general circulation, qualified under chapter 493, located within the political subdivision,  
43 or, if there is no such newspaper, in a qualified newspaper of general circulation in the  
44 county, or, if there is no such newspaper, in a qualified newspaper of general circulation  
45 in an adjoining county, and may advertise in business, trade, or minority newspapers, for  
46 qualification submissions on said design-build project.

47           (2) If the political subdivision fails to receive at least two responsive submissions  
48 from design-builders, submissions shall not be opened and the political subdivision shall  
49 re-advertise the project.

50           (3) The political subdivision shall have the right to reject any and all submissions  
51 and proposals.

52           (4) The proposals from prequalified design-builders shall be submitted sealed and  
53 in writing, to be opened publicly at the time and place of the political subdivision's  
54 choosing.

55           (5) The design-build contract shall be awarded to the design-builder whose proposal  
56 represents the best overall value to the political subdivision in terms of quality, technical  
57 skill, and schedule.

58           **(6) No proposal shall be entertained by the political subdivision that is not made in**  
59 **accordance with the request for proposals furnished by the political subdivision.**

60           **4. (1) The payment bond requirements of section 107.170 shall apply to the design-**  
61 **build project. All persons furnishing design services shall be deemed to be covered by the**  
62 **payment bond the same as any person furnishing labor and materials; however, the**  
63 **performance bond for the design-builder does not need to cover the design services as long**  
64 **as the design-builder or its subcontractors providing design services carry professional**  
65 **liability insurance in an amount established by the political subdivision in the request for**  
66 **proposals.**

67           **(2) Any person or firm providing architectural, engineering, landscape architecture,**  
68 **or land-surveying services for the design-builder on the design-build project shall be duly**  
69 **licensed or authorized in this state to provide such services as required by chapter 327.**

70           **5. A political subdivision planning a design-build project shall retain an architect**  
71 **or engineer, as appropriate to the project type and duly licensed in this state, to assist with**  
72 **the design criteria package, preparation of the request for proposals, prequalifying design-**  
73 **builders, and evaluation of proposals.**

74           **6. Under section 327.465, any design-builder that enters into a design-build contract**  
75 **for a political subdivision is exempt from the requirement that such person or entity hold**  
76 **a certificate of registration or that such corporation hold a certificate of authority if the**  
77 **architectural, engineering, or land-surveying services to be performed under the contract**  
78 **are performed through subcontracts with properly licensed and authorized persons or**  
79 **entities, and not performed by the design-builder or its own employees.**

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